

Docket 61992
Serial No. 10/823,074

PATENT APPLICATION

REMARKS

This is in full and timely response to the Final Office Action on the merits dated July 20, 2006. Reconsideration and reexamination are respectfully requested in view of the
5 foregoing amendments and the following remarks.

In this office action, the examiner has withdrawn the previous indication that claims 12, 14, and 20 were allowable and that several other claims would be allowable if rewritten to include the subject matter of other claims. By the present amendment, claims 1-11, 13, and 15-19 have been currently or previously canceled. Therefore, claims 12, 14 and
10 20 remain in this application with claims 12 and 20 being independent. The applicant urges the examiner to read this Response completely and not to prematurely conclude that further consideration requires a Request for Continued Examination ("RCE") to be filed by the applicant. This is especially encouraged as the applicant believes that the examiner has erroneously removed his earlier decision of Allowability, and to require an RCE would be to
15 unnecessarily prolong the time and expense of prosecution. Only a brief consideration of this response is needed to determine that the claims were rightfully allowed previously and are currently in condition for allowance.

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IN THE CLAIMS:

35 U.S.C. § 112 Rejections:

Claims 1, 5, 8-10, 12, 14, and 20 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. The examiner states that the claims contain subject matter which was not described in the specification in such a way to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. For the reasons explained below, the applicant strongly disagrees with this determination and requests that the previous indication of allowance be made once again.

The examiner implies that the embodiment of this invention that is now recited in claim 12 does not comply with 35 U.S.C. 112, first paragraph, unless all of its elements were either shown in a drawing or specifically discussed in combination in the specification. As will be shown in detail later, the applicant urges that this conclusion is improper in that (1) the specification does in fact discuss a combination of all of the recited elements of claims 12, 14, and 20, either by explicit description of the construction of changed elements (e.g. the two-part basket, trigger, and linkage) or by specific reference to the construction of items previously discussed (e.g. handle, sleeve, post and clamp assembly) and (2) the drawings do in fact show all of the elements in claims 12, 14, and 20 in such a way to show that the applicant indeed had possession of the claimed invention.

1. Claim 12 recites a food roasting apparatus that includes both the structure of a trigger assembly (including all elements of a linkage pushrod, rotating arm, etc.) in

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combination with a sleeve coupled to the rod for slidable movement, and a post and clamp assembly for ground penetration. In sharp contrast to the examiner's conclusion to the contrary, this combination is more than adequately shown and described in order to prove that the applicant was in possession of the recited invention.

Claim 12 essentially recites the subject matter of the embodiment of the roasting device having a basket member that includes first and second basket members, a trigger, and a linkage. This recitation correlates to the embodiment 200 specifically described on pages 8-9 of the original specification and shown in Figs. 5a through 7. Regarding this embodiment, the specification clearly stated that this embodiment "includes a construction substantially similar to the construction previously described except as specifically noted below" (Application, p. 8, lines 12-13). The only difference between embodiment 200 and the previous embodiment 100 was the two-part basket member, trigger, and linkage. Everything else was understood to be the same – including the sleeve, post, and clamp assembly! In this regard, there would be no confusion by one of ordinary skill in this art regarding how to make or operate the device or to understand that a roasting device having the recited combination of elements was in the possession of the applicant. In other words, it is understood that a roasting device having the construction of the first described embodiment 100 could then include the same construction (including sleeve and post/clamp assembly) except for a two-part basket member. The reason why a reader of this patent application would understand that the applicant had possession of an embodiment including a two-part basket and all of the elements previously described (and now recited) is because the applicant specifically stated so in the specification.

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2. To make it even more clear that the original specification adequately teaches an embodiment recited in claims 12, 14, and 20, the applicant points out that the rod 110 shown in Figs. 5a to 7 is the same rod shown previously in Figs. 1 through 4. Similarly, the same handle 120 is shown in the drawings for both embodiments. Therefore, the only difference between the illustrated embodiments is the basket construction and the specification clearly disclosed that both embodiments otherwise included substantially the same construction. While Figs. 5a through 7 do not show a sleeve or post and clamp assembly, it has been shown (above) that this construction was, as in the case of the handle and rod, identical. In addition, the sleeve 140 was shown in Fig. 2b adjacent the handle 120. There is nothing in the embodiment 200 that would be inconsistent with the sleeve 140 operating as previously described. In fact the specification says that the constructions were the same unless specifically noted otherwise. The same point can be made of the post and clamp assembly as it is applied to the same rod 110.

There being absolutely no inconsistencies of construction or any question that the unchanged elements of a previously described embodiments would have a substantially similar construction, there is no basis for the examiner's conclusion that the specification does not explain how such an embodiment (as now recited) would "operate". Clearly, the unchanged elements (which were incorporated by specific reference) would operate identically as described previously. In all respects, therefore, it was thus made clear that the recited subject matter was in the possession of the applicant.

It should be clear that the applicant has shown, through specific citations to the application and to the drawings, that the applicant had possession of the invention recited in


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claim 12 and 14 which depends therefrom. For all of these reasons, this Response should be entered without the need for an RCE and such is respectfully requested. As the discussion above should so overwhelmingly show that the originally allowed claims should again be so classified, action on this response should not require any further consideration; rather, it simply calls for the examiner to withdraw the current rejections and re-establish the allowability previously indicated.

Respectfully Submitted,

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